IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1394 OF 2004

Shri Soma Govind Lot .. Appellant

Versus

Shri Sakharam Sambhaji Rane

deceased heirs

Smt.Sitabai Sakharam Rane & Ors... Respondents

Ms.S.A.Mudbidri for appellant

Mr.N.V.Mhatre for respondents

CORAM : P.V.KAKADE, J.

DATE : 12th JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the District Judge, Sindhudurg dated 13th January 2004 partly allowing the

appeal and modifying the decree granted by the trial court to the effect that besides the property at Sr.No.8Survey No.31 Hissa No.5, it was further declared that the appellant and Respondent Nos.5 to 7 are also owners of property at Sr.No.11 bearing Survey No.39 Hissa No.75 and the respondent nos.1 to 4 are perpetually restrained from obstruction or interfering into the possession of the appellants and the respondent nos.5 to 7 over the suit property at Sr.No.8 bearing survey No.31 Hissa No.0.5 and suit property at Sr.No.11 bearing Survey No.39 Hissa No.75. Rest of the decree of the trial court was confirmed.

2. I heard the learned counsel for both the parties. Perused the record including the judgments of both the courts below.

3. The plaintiffs filed the suit for declaration, perpetual injunction and damages in respect of the suit properties mentioned in para No.1 of the plaint of village Bhadgaon, Taluka Kudal, District Sindhudurg. The plaintiffs came with the case that father of Plaintiff no.3 had field Regular Civil Suit No.79/1939-40. In that suit the father of defendant

No.1 to 3 Sambhaji Bhau Rane was the defendant no.1 and present defendant nos.1 to 3 were defendant nos.2 to 5. At the same time, the father of the plaintiff i.e. the husband of plaintiff no.2 Govind Sakharam Lot was defendant no.6 and the aunt of plaintiff no.1 Kashi was defendant no.7. That suit came to be decreed and shares of the parties were determined. At the same time father of defendant no.3 got partitioned and accordingly he was given land. Except the share allotted to defendant nos.1 to 3 they had no right, concerned with the rest of the suit properties and hence the suit came to be filed. The defendants contested the suit submitting that the allegations made by the plaintiffs were false and they are owners by adverse possession of the suit property.

. The trial judge adjudicated the dispute on merits and and came to the conclusion that the defendants had proved that though the land survey no.25/0, 26/0 and 31/4 were allotted to the share of the plaintiffs, but they were in possession and cultivation since long and as such they became the owner of the suit land by way of adverse possession. It was further held that the plaintiffs had proved their title over the suit properties Survey No.31 H.No.5 only. It was also held

that the defendant nos.1 to 3 had acquired title to the share of plaintiff no.3 in the suit land bearing Survey No.26 Hissa No.25 Hissa No.05, Survey No.24 Hissa NO.5 and Old Survey No.31 F.No.1 and Survey No.17 F.No.4 by adverse possession. Plaintiffs were held to be entitled for relief of declaration and injunction to the extent of Survey No.31 Hissa No.5 only and suit came to be partly decreed in such manner. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence on record modified the decree to the extent noted earlier and confirmed the remaining order of the lower court. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be raised is with regard to the findings recorded by the trial court to the effect that the defendants had become owners by adverse possession of the suit properties as noted above. Though it is to be noted that the learned appellate court judge has come to the conclusion that the respondent nos.1 to 4 had not become owners by adverse possession still that the parties have proved

that they are owners of the given and mentioned land out of total 11 lands, which are suit properties.

. Perusal of judgments of both the courts below, it is seen that they have arrived at the conclusion that the defendants have become owners by adverse possession of the impugned lands, which are part of the suit properties, after properly appreciating the evidence on record. Moreover, it is needless to mention that the issue in respect of adverse possession is issue of fact pure and simple. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of Civil Procedure Code. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In the present case, before us, it is found from the record that both the courts below have appreciated all aspects and available evidence on record and have come to the conclusion as noted earlier, and therefore, I have no doubt whatsoever that the present appeal has no merits. In the result the appeal stands dismissed with no order as to costs.

. Consequently Civil Application No.1861 of 2004 is also stands dismissed.